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Counsel for the Official Committee Of  
 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re: ) BK-S-06-10725-LBR  
 USA COMMERCIAL MORTGAGE COMPANY, ) Chapter 11  
 Debtor. )

In re: ) BK-S-06-10726-LBR  
 USA CAPITAL REALTY ADVISORS, LLC, ) Chapter 11  
 Debtor. )

In re: ) BK-S-06-10727-LBR  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, ) Chapter 11  
 Debtor. )

In re: ) BK-S-06-10728-LBR  
 USA CAPITAL FIRST TRUST DEED FUND, LLC, ) Chapter 11  
 Debtor. )

In re: ) BK-S-06-10729-LBR  
 USA SECURITIES, LLC, ) Chapter 11  
 Debtor. )

Affects )

- ☐ All Debtors )  
☐ USA Commercial Mortgage Co. )  
☐ USA Securities, LLC )  
☐ USA Capital Realty Advisors, LLC )  
☐ USA Capital Diversified Trust Deed )  
☒ USA First Trust Deed Fund, LLC )

Date: January 31, 2007  
 Time: 9:30 a.m.

**SECOND OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY  
 SECURITY HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC TO  
 MISFILED CLAIMS (AFFECTS DEBTOR USA CAPITAL FIRST TRUST DEED FUND,  
 LLC)**

1 The Official Committee of Equity Security Holders of USA Capital First Trust  
 2 Deed Fund, LLC (the "FTDF Committee") appointed in the above-captioned bankruptcy cases (the  
 3 "Chapter 11 Cases"), hereby submits this "Second Omnibus Objection Of The Official Committee  
 4 Of Equity Security Holders Of USA Capital First Trust Deed Fund, LLC To Misfiled Claims" (the  
 5 "Objection"), pursuant to which the FTDF Committee objects to the proofs of claim referenced  
 6 herein (the "Wrong Debtor Claims") on the grounds that they have been erroneously filed against  
 7 the USA Capital First Trust Deed Fund, LLC ( the "FTDF") and that the FTDF has no liability on  
 8 account of such claims. By this Objection, the FTDF Committee does not seek to prejudice the  
 9 rights of any of the claimants who filed Wrong Debtor Claims (the "Claimants") to recover from  
 10 other Debtors in the Chapter 11 Cases on account the liabilities asserted in the Wrong Debtor  
 11 Claims.

12 This Objection is made pursuant to section 502 of chapter 11 of title 11 of the  
 13 United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy  
 14 Procedure ("Bankruptcy Rules"), and Rule 3007 of the Local Rules of Bankruptcy Practice (the  
 15 "Local Rules") and is based upon the points and authorities which follow, the pleadings, papers  
 16 or other matters contained in the Court's file, judicial notice of which is respectfully requested,  
 17 and any oral argument of counsel to be presented at the time of the hearing on this Objection.

18 Based on the foregoing, the FTDF Committee request that the Court enter an  
 19 order (i) sustaining the Objection; (ii) disallowing the Wrong Debtor Claims, in their entirety, as  
 20 filed against the FTDF, without prejudice to the right of any Claimant to assert the Wrong  
 21 Debtor Claims against the appropriate Debtor in these Chapter 11 Cases and without prejudice to  
 22 the right of the FTDF to object to the Wrong Debtor Claims on other grounds at a later date; and  
 23 (iii) granting such other and further relief as the Court deems just and proper.

24 Respectfully submitted:

25 Dated: December 27, 2006

/s/ Andrew M. Parlen

26 Andrew M. Parlen, Esq.  
 27 Stutman, Treister & Glatt  
 28 Professional Corporation  
 Counsel to the Official Committee of Equity  
 Security Holders of USA Capital First Trust Deed  
 Fund, LLC

**POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

**A. General Background**

1. On April 13, 2006 (the "Petition Date"), USA Commercial Mortgage Company ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC (the "DTDF"), and the FTDF (collectively with USA Mortgage, USA Securities, USA Realty, and the DTDF, the "Debtors") filed voluntary petitions for relief under chapter 11 the Bankruptcy Code.

2. Thereafter, on May 9, 2006, this Court entered its Order Regarding Joint Administration Without Substantive Consolidation [docket no. 184] whereby the Court ordered that the Chapter 11 Cases be jointly administered under the name of USA Commercial Mortgage Company, bankruptcy case number BK-S-06-10725-LBR.

3. No trustee or examiner has been appointed in the Chapter 11 Cases. Rather, the Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On May 10, 2006, the Office of the United States Trustee (the "U.S. Trustee") appointed four separate committees in these Chapter 11 Cases, including the FTDF Committee.

5. The FTDF Committee represents the interests of those persons who invested in the FTDF (the "FTDF Members"). FTDF Members hold equity, or membership, interests in the FTDF.

6. On June 15, 2006, each of the Debtors filed their "Summary of Schedules and Statement of Financial Affairs" (collectively, the "Schedules") pursuant to Bankruptcy Code section 521(a)(1)(B), based upon their books and records as of the Petition Date.

7. On September 14, 2006, the Court entered its Order Setting Deadline to File Proofs of Claim and Proofs of Interest [Docket No. 1280] setting the deadline of November 13, 2006, to file proofs of claim and proofs of interest in the Chapter 11 Cases.

8. On or about September 18, 2006, the Debtors mailed proof of claim and proof of interest forms, together with instructions explaining that (i) if any equity interest holder (such as a FTDF Member) wished to assert a claim (as opposed to an equity interest) against any of the Debtors, then that equity holder must file a proof of claim but that proofs of claim should only be filed in those instances where the claimant believed one of the Debtors owed the claimant monies for such things as damages, rescission, reimbursement or contribution; and (ii) if the equity interest holder had no disagreement with the amount indicated on the proof of interest form included in the mailing, then that equity interest holder need take no action and his or her proof of interest in the FTDF would be deemed allowed in the amount shown on the proof of interest form.

#### **B. The Debtors' Businesses**

9. As of the Petition Date, USACM was acting as the loan servicer for 115 separate loans (the "Serviced Loans") having a combined outstanding loan balance of approximately \$960 million. See Debtors' First Amended Disclosure Statement For Debtors' Third Amended Joint Plan Of Reorganization (the "Disclosure Statement") [docket no. 1798] at 24.

10. According to the Debtors, there are approximately 3,600 investors (the "Loan Investors") whose names appear as a "Lender" in the documents for one or more of the Serviced Loans. Id. Among the Loan Investors are the FTDF and the DTDF (collectively, the "Funds").

11. As of July 31, 2006, the FTDF had an interest as a Loan Investor in 47 of the Serviced Loans, and the aggregate outstanding balance owed to FTDF was \$62,653,825. Id. at 26. All of the FTDF's loans were originated and are serviced by USACM. Id.

12. There are approximately 950 FTDF Members, each of whom own membership interests in the FTDF. Id. It bears emphasizing that the FTDF, not the FTDF Members, is a lender on the Serviced Loans, and its investments, not those of the FTDF Members, are secured by deeds of trust. FTDF Members are only entitled to receive distributions to the extent that the profits of the FTDF exceed its losses. In other words, FTDF

1 Members hold equity security interests in the FTDF.

2 **C. Analysis of Proofs of Claim Filed Against the FTDF**

3 13. On August 1, 2006, the FTDF filed two omnibus objections to claims: (i)  
4 the Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital  
5 First Trust Deed Fund, LLC to Misfiled Claims [Docket No. 1064]; and (ii) the Omnibus  
6 Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed  
7 Fund, LLC to Claims Based on Prepetition Equity Security Interests of USA Capital First Trust  
8 Deed Fund, LLC [Docket No. 1066]. These objections were sustained by orders of the Court  
9 dated September 14, 2006 [Docket Nos. 1278 and 1279].

10 14. As of the filing of this Objection, 110 proofs of claim filed against the  
11 FTDF remain outstanding. The FTDF Committee has analyzed these proofs of claim and has  
12 determined that, with respect to the Wrong Debtor Claims, the FTDF has no liability as such  
13 claims were erroneously filed against the FTDF. Indeed, all but one of the Wrong Debtor Claims  
14 were filed by Claimants who are not FTDF Members, but rather are either members of the DTDF  
15 or are simply Loan Investors. A detailed listing of the Wrong Debtor Claims is attached hereto  
16 as **Exhibit "1"** and is incorporated herein by reference.

17 15. In analyzing the Wrong Debtor Claims, certain trends are apparent.  
18 Above all, some Claimants appear to have filed claims against all of the Debtors in the Chapter  
19 11 Cases irrespective of whether they have any connection to a particular Debtor. As such,  
20 certain Claimants have filed Wrong Debtor Claims against the FTDF on account of an  
21 investment made through one of the other Debtors even though such Claimants are not FTDF  
22 Members. For instance, the Layne Family Trust, which is not a FTDF Member, filed proofs of  
23 claim in the amount of \$240,000 against all of the Debtors, including the FTDF, on account of  
24 his agreement to loan \$240,000 to Fiesta Development through USACM.

25 16. Another explanation for the number of Wrong Debtor Claims is that upon  
26 loaning money through USACM to a borrower, Loan Investors received a sheet summarizing  
27 their investment, which sheet states in large, bold, underlined print: "First Trust Deed  
28 Investment." Claimants may not realize that making a "First Trust Deed Investment" as a Loan

Investor is distinct from investing in the FTDF and becoming a FTDF Member.

17. Moreover, some of the Wrong Debtor Claims were filed in duplicate, and, accordingly, the duplicative Wrong Debtor Claims should be disallowed in their entirety.

18. In summary, the FTDF has no liability for any of the Wrong Debtor Claims, and all such claims should be disallowed as set forth on Exhibit "1."

## II. ARGUMENT

19. Bankruptcy Code section 502 authorizes a party in interest to object to claims. See 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the creditor has the ultimate burden of persuasion as to the validity and amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

20. The FTDF Committee has analyzed the Wrong Debtor Claims and has determined that the FTDF has no liability on account of any of the Wrong Debtor Claims. Rather, all of the Wrong Debtor Claims are based on either loans to borrowers made through USACM or on investments in the DTDF. Accordingly, all of the Wrong Debtor Claims should be disallowed in their entirety.

21. Additionally, some of the Wrong Debtor Claims are duplicative of other Wrong Debtor Claims and, accordingly, should be disallowed. Section 502(b)(1) of the Bankruptcy Code provides that the bankruptcy court shall not allow a claim that "is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). Section 502 therefore precludes the allowance of duplicative proofs of claim because applicable law plainly prevents a claimant from recovering twice on a single debt. See Fine Organics Corp. v. Hexcel Corp. (In re Hexcel Corp.), 174 B.R. 807, 811 (Bankr. N.D. Cal. 1994)

(noting the bankruptcy policy "intended to protect the limited assets of the estate from duplicative claims"); In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 160 B.R. 882, 894 (Bankr. S.D.N.Y. 1993) ("to allow one creditor to assert two dollars in claims for every one dollar of loss from the same debtor violates principles of ratable distribution and offends notions of uniform treatment for creditors") (quotations omitted). Therefore, all duplicative Wrong Debtor Claims should be disallowed.

### III. NOTICE

22. This Objection<sup>1</sup> will be served on (i) the Claimants who filed the Wrong Debtor Claims at the addresses set forth on the claimants' respective proofs of claim, (ii) all parties on Master Service List for Limited Notice #5 Dated November 1, 2006 and (iii) all parties who have filed requests for special notice since the filing of such master service list. In light of the nature of the relief requested, the FTDF Committee submits that no other or further notice need be given.

### IV. CONCLUSION

23. For the reasons set forth herein, the FTDF Committee respectfully requests that the Court enter an order (i) sustaining the Objection; (ii) disallowing the Wrong Debtor Claims, in their entirety, as filed against the FTDF, without prejudice the right of any Claimant to assert the Wrong Debtor Claims against the appropriate Debtor in these Chapter 11 Cases and without prejudice to the right of the FTDF to object to the Wrong Debtor Claims on other grounds at a later date; and (iii) granting such other and further relief as the Court deems just and proper.

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<sup>1</sup> Given the voluminous nature of the Wrong Debtor Claims and the attachments thereto and in light of the facts that the Court has access to the FTDF claims register and the Claimants already have copies or are aware of their own respective Wrong Debtor Claims, the FTDF Committee is not filing or serving copies of the Wrong Debtor Claims along with this Objection. Copies of the Wrong Debtor Claims will be provided upon request made to the FTDF Committee's undersigned counsel.

1 Respectfully submitted this 27th day of December, 2006.

2  
3 /s/ Andrew M. Parlen

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